

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

SHAN D. PRATHER,

Plaintiff,

vs.

TOM LEE, et al.,

Defendants.

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CASE NO. CIV-12-1346-R

REPORT AND RECOMMENDATION

Plaintiff, a state prisoner appearing *pro se*, has brought this action purporting to seek relief pursuant to 42 U.S.C. §1983 for the alleged violation of his constitutional rights. United States District Judge David L. Russell has referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U. S. C. §636(b)(1)(B) and (C).

By order dated December 10, 2012, the undersigned noted that Plaintiff's filing was deficient; specifically, Plaintiff's complaint was not properly signed by the Plaintiff. Plaintiff was advised that in order for his action to proceed, he must cure the deficiency by January 2, 2013. Plaintiff was further advised that failure to comply with the order could result in the dismissal of his action.

A review of the court file reveals that as of this date Plaintiff has not responded to this court's order. He has not cured the deficiency, shown good cause for his failure to do so, or requested an extension of time to comply with the order. The undersigned finds that Plaintiff's failure to comply with this court's order together with the court's right and responsibility to manage and control its case load, warrants dismissal of this action without

prejudice. *See Nasious v. Two Unknown B.I.C.E. Agents at Arapahoe County Justice Center*, 492 F.3d 1158, 1161 n. 2, 1162 (10th Cir. 2007) (sua sponte dismissal for failure to comply with court's order permitted under federal rule, and court need not follow any particular procedures in dismissing action without prejudice for failure to comply).

RECOMMENDATION AND NOTICE OF RIGHT TO OBJECT

Therefore, it is the recommendation of the undersigned that Plaintiff's action be dismissed without prejudice to refiling. Any objection to this Report and Recommendation must be filed with the Clerk of this Court on or before the 29 day of January, 2013, in accordance with 28 U. S. C. §636 and Federal Rule of Civil Procedure 72. Failure to make a timely objection to this Report and Recommendation waives the right to appellate review of both the factual findings and the legal issues decided herein. *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This Report and Recommendation disposes of all issues referred to the Magistrate Judge in the captioned matter.

ENTERED this 9 day of January, 2013.


BANA ROBERTS
UNITED STATES MAGISTRATE JUDGE